IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.MC.No. 2028 of 2004-C

CC.387/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: ACCUSED:

RT.REV.DR.GEORGE ISAAC,
S/O. LATE P.J. ISAAC, AGED 57 YEARS, BISHOP IN
NORTH KERALA, CHURCH OF SOUTH INDIA & CHAIRMAN,
C.S.I. DIOCESAN COUNCIL, C.S.I.DIOCESAN OFFICE,
SHORANUR P.O., PALAKKAD DISTRICT, PIN-679 121.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS: COMPLAINANT & STATE:

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1. PHILIP EDACHERRY, S/O. PATHROSE,
AGED 65 YEARS, BURNACHERRY P.O., KANNUR DISTRICT,
PIN-670 013.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682 031.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD
BY PUBLIC PROSECUTORMR. C.M. KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.2028 OF 2004

DATED THIS THE TH 10TH DAY OF JANUARY 2007

ORDER

The petitioner, who is the accused in C.C.No. 387/2004 in the file of the Court of Judicial Magistrate of First Class, Payyannur with respect to the offence under Section 500 of the Indian Penal Code initiated by the first respondent, has sought for getting the proceedings quashed alleging that the same is vitiated with mala fides and amounted to abuse of process of the court.

2. It is the case of the petitioner that he is the Bishop of North Kerala Diocese of the Church of South India and that the first respondent/complainant was the Secretary-cum-treasurer of the Madayi Pastorate committee. The respondents had filed C.C.No.387/2004 making the petitioner also a defendant for rendering of accounts for the period that they were in-charge of the pastorate committee and third defendant therein is the petitioner. It is stated that the complainant/respondent had submitted a petition, i.e. Annexure-C with the junction of 4

others as well raising allegations against the Vicar of Madayi church, who is also the Chairman of the Pastorate committee. The petitioner being the spiritual head of the particular diocese had examined the complaint after getting explanations from the vicar and has found that the allegations are false and the same was intimated to the respondent. He had also conveyed to the respondent that certain amounts were found not duly accounted and that he has mismanaged the funds of the pastorate committee and committed breach of trust. Disciplinary proceedings were contemplated against the first respondent. It was then that he filed O.S.No.365/2003 for a permanent prohibitory injunction restraining the petitioner from initiating any disciplinary proceedings against him. It is subsequently thereafter the impugned proceedings have been initiated. The petitioner has also produced copy of the order in I.A.No.112/2004 in O.S.No. 365/2003 of the Munsiff of Tlaiparamba rejecting the application filed by the respondent for an interim injunction restraining the Bishop from initiating any disciplinary action against him. Annexure-A is the copy of the complaint wherein it is alleged that the letter sent by the

petitioner to the first respondent in response to Annexure-C petition contained false allegations against the respondent and a copy of the same was addressed to the vicar of the church and that a translated copy of the notice was read by the pastorate members and persons who visited the church of Madayi. It is also mentioned that the above letter published in the notice board of the church on 11-1-2004

3. It is pointed out that there is no allegation that the petitioner had any hand in getting the notice translated and getting it published in the notice board. Annexure-E is the reply sent by the petitioner to Annexure-D lawyer notice wherein it is mentioned that the letter was only a personal letter to the respondent and there was no publication and that the matter was covered by the letter is regarding the accounts of pastorate committee. It was also pointed out by the counsel that the petitioner is a long leave on account of ill-health. It was also pointed out that the case of publication is not contained in Annexure-D notice and after receipt of Annexure-D notice, it is absolutely improbable that the petitioner would have got translated the letter and copy published in the notice board. It is

also pointed out that the only convenient portions of the letter sent by the petitioner has been quoted in Annexure-A compliant. Counsel for the respondent has contended that even without considering the publication as well, sending copy of the letter to the vicar itself amounted to defamation.

4. In the circumstances as evident from the sequence of events and the nature of the allegations and in the light of the proceedings initiated on the civil side by the respondent to stall the disciplinary proceedings proposed to be initiated against him, it appears that Annexure-A complaint is intended only to harass the petitioner and initiated as a retaliatory measure. It is highly improbable that on receipt of Annexure-D notice, the petitioner would have instructed the vicar to get the notice translated and published. Moreover, there is no allegation that the petitioner caused the translation and publication of the same in the notice board. So far as the contention that issuing copy to the vicar of the church itself would amount to contempt, I find that the same cannot be sustained. The vicar of the church is the Chairman of the pastorate committee and the pastorate committee is intended to assist the vicar in conducting the affairs of the church. Hence,

he can only be treated as an insider. It is also evident from the copy of the letter produced at the time of hearing by the counsel for the petitioner that in the letter the petitioner had mentioned that he had called for explanations of the vicar about the complaints raised by the respondent and 4 others. It appears that on enquiry, he has found certain irregularities in the accounts while the respondent was the Secretary of the pastorate committee and disciplinary proceedings were also proposed to be initiated. In the circumstances, I find that the proceedings initiated cannot be sustained.

In the result, the proceedings in C.C.No.387/2004 in the file of the Judicial Magistrate of First Class, Payyannur is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

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